

1 Jeremy S. Golden, Esq. SBN 228007
2 Golden & Cardona-Loya, LLP
3 3130 Bonita Road, Suite 200B
4 Chula Vista, CA 91910
5 jeremy@goldencardona.com
6 Phone: 619-476-0030; Fax: 775-898-5471
7 Attorneys for Plaintiff

8 LODGED
9
10 20 SEP - 6 AM 10:51
11 U.S. DISTRICT COURT
12 CENTRAL DISTRICT OF CALIF.
13 LOS ANGELES
14 MAY
15 Clerk's Office
16 by
17
18
19
20

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CV 12-7618

10 ALMATINA SMITH, an individual,) Case No. CV 12-7618
11)
12 Plaintiff,) COMPLAINT AND DEMAND FOR
13) JURY TRIAL (Unlawful Debt
14) Collection Practices)
15)
16 PROGRESSIVE FINANCIAL)
17 SERVICES, INC., a corporation; and)
18 DOES 1 through 10, inclusive,)
19)
20 Defendants.)
21)
22)
23)

I. INTRODUCTION

21 1. This is an action for damages brought by an individual consumer against
22 Defendants for violations of the Federal Fair Debt Collections Practices Act and California
23 Rosenthal Act which prohibit debt collectors from engaging in abusive, deceptive, and unfair
24 practices and for invasion of privacy.

II. JURISDICTION AND VENUE

25
26
27 2. Jurisdiction of this Court arises under 15 U.S.C. §1692k(d) and 28
28 U.S.C. §1331. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C.

1 §1367. Venue in this District is proper in that the Defendants transact business here and the
2 conduct complained of occurred here.

III. PARTIES

4 3. Plaintiff ALMATINA SMITH is a natural person residing in the State of
5 California, County of Los Angeles.

6 4. Defendant PROGRESSIVE FINANCIAL SERVICES, INC. is a corporation
7 doing business of collecting debts in California operating from an address at 1919 W.
8 FAIRMONT DRIVE, BUILDING 8, TEMPE, AZ 85282.

9 5. Defendants are engaged in the collection of debts from consumers using the
10 mail and telephone. Defendants regularly attempt to collect consumer debts alleged to be due
11 to another. Defendants are “debt collectors” as defined by the FDCPA, 15 U.S.C. §1692a(6),
12 and by the Rosenthal Act, California Civil Code 1788.2(c).

6. Plaintiff is a “consumer” as defined by the FDCPA, 15 U.S.C. 1692a(3).

14 7. The purported debt that Defendants attempted to collect from Plaintiff was a
15 “debt” as defined by the FDCPA, 15 U.S.C. §1692a(5).

6 8. Plaintiff is a “debtor” as defined by the Rosenthal Act, California Civil Code
7 1788.2(h).

8 9. The purported debt which Defendants attempted to collect from Plaintiff is a
9 “consumer debt” as defined by the Rosenthal Act, California Civil Code §1788.2(f).

10. The true names and capacities, whether individual, corporate (including officers
and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through
10, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such
fictitious names. Plaintiff is informed and believes, and alleges that each Defendant
designated as a DOE is involved in or is in some manner responsible as a principal,
beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or
otherwise, for the agreements, transactions, events and/or acts hereinafter described, and
thereby proximately caused injuries and damages to Plaintiff. Plaintiff requests that when the

1 true names and capacities of these DOE Defendants are ascertained, they may be inserted in
2 all subsequent proceedings, and that this action may proceed against them under their true
3 names.

4 **IV. FACTUAL ALLEGATIONS**

5 11. Plaintiff allegedly owed Defendant PROGRESSIVE FINANCIAL SERVICES,
6 INC. ("Progressive") a debt (the "debt").

7 12. Plaintiff, in good faith, made arrangements with Progressive to pay off the debt.

8 13. Plaintiff and Progressive agreed that Plaintiff would make a payment in the
9 amount of \$20 to Progressive starting June 30, 2012 and continuing thereon until the debt
10 was paid in full.

11 14. Plaintiff provided Progressive her account number to debit the payment at the
12 end of June as agreed.

13 15. Progressive then contacted Plaintiff on or about June 15, 2012 and informed
14 Plaintiff that the payment did not go through.

15 16. Plaintiff informed the Progressive representative that the parties agreed to debit
16 the payment at the end of the month.

17 17. Progressive's representative then stated that Progressive would have to garnish
18 Plaintiff's wages since the payment did not go through.

19 18. Progressive then unexpectedly debited Plaintiff's account on about July 20,
20 2012 without her permission or knowledge.

21 19. The July 20 debit caused Plaintiff trouble in making her car payment.

22 20. Progressive further engaged in a campaign of excessive and harassing phone
23 calls to collect payment on the debt.

24 21. Progressive contacted Plaintiff's work in addition to her cell phone.

25 22. Plaintiff requested the calls to her work cease as her employer has a policy
26 against such calls.

27 23. Progressive however continued contacting Plaintiff at her work.

28 24. Plaintiff estimates Progressive contacted her at work around ten (10) times.

1 25. Progressive also spoke to one of her supervisors on at least two occasions.

2 26. During one phone call, a Progressive representative told Plaintiff to donate
3 blood in order to make payment on the debt.

4 27. Progressive representatives further threatened to garnish Plaintiff's wages.

5 28. Progressive also contacted Plaintiff's sister and told her that Plaintiff owed a
6 debt.

7 29. As a result of Defendants' conduct, Plaintiff suffered from emotional distress.

8

9 **V. FIRST CLAIM FOR RELIEF**

10 **(Against Defendants for Violations of the Fair Debt Collection Practices Act)**

11 30. Plaintiff repeats, realleges and incorporates by reference all of the foregoing
12 paragraphs.

13 31. Defendants violated the FDCPA. Defendants' violations include, but are not
14 limited to, the following:

- 15 (a) The Defendants violated 15 U.S.C. § 1692b(1) by contacting a
16 person other than the Plaintiff and failing to identify him/herself,
17 and/or failing to state that he/she is confirming or correcting location
18 information concerning the Plaintiff;
- 19 (b) The Defendants violated 15 U.S.C. § 1692b(2) by communicating with
20 persons other than the Plaintiff and stating that the Plaintiff owes debt;
- 21 (c) The Defendants violated 15 U.S.C. § 1692b(3) by communicating with
22 persons other than the Plaintiff and contacting that person more than once;
- 23 (d) The Defendants violated 15 U.S.C. § 1692c(a)(1) by communicating
24 with the Plaintiff at an unusual time or place and/or communicating
25 with the Plaintiff at a time or place known or which should have been
26 known to be inconvenient to the Plaintiff;
- 27 (e) The Defendants violated 15 U.S.C. § 1692c(a)(3) by contacting the
28 Plaintiff's place of employment when the debt collector knew or had

1 reason to know that the Plaintiff's employer prohibited such
2 communication;

- 3 (f) The Defendants violated 15 U.S.C. §1692c(b) by communicating with a
4 third person in connection with the collection of a debt;
5 (g) The Defendants violated 15 U.S.C. § 1692d by engaging in conduct the
6 natural consequence of which is to harass, oppress, and abuse persons in
7 connection with the collection of the alleged debt;
8 (h) The Defendants violated 15 U.S.C. § 1692d(5) by causing the phone to
9 ring or engaging a person in telephone conversations repeatedly with the
10 intent to harass, oppress, and abuse the Plaintiff in connection with the
11 collection of the Debt;
12 (i) The Defendants violated 15 U.S.C. § 1692e by using false, deceptive, or
13 misleading representations or means in connection with the collection of a
14 debt;
15 (j) The Defendants violated 15 U.S.C. § 1692e(5) by threatening to take
16 action that could not legally be taken or that was not intended to be taken;
17 (k) The Defendants violated 15 U.S.C. § 1692e(10) by using a false
18 representation or deceptive means to collect or attempt to collect any
19 debt or to obtain information regarding a consumer; and
20 (l) The Defendants violated 15 U.S.C. § 1692(f) by using unfair or
21 unconscionable means to collect or attempt to collect a debt.

22 32. As a result of the above violations of the Fair Debt Collection Practices Act,

23 Defendants are liable to the Plaintiff for Plaintiff's actual damages, statutory damages, and
24 attorney's fees and costs pursuant to 15 U.S.C. §1692k.

25 //

26 //

27 //

28 //

VI. SECOND CLAIM FOR RELIEF

(Against all Defendants for Violations of the California Rosenthal Act)

33. Plaintiff repeats, realleges and incorporates by reference all of the foregoing paragraphs.

34. Defendants violated the Rosenthal Act, by including but not limited to, the following:

- (a) Defendants violated California Civil Code §1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called;
 - (b) Defendants violated California Civil Code §1788.11(e) by communicating with the Plaintiff with such frequency as to be unreasonable and to constitute an harassment to the Plaintiff under the circumstances; and
 - (c) Defendants violated California Civil Code §1788.12(a) by communicating with the Plaintiff's employer regarding the debtor's debt;
 - (d) Defendants violated California Civil Code §1788.12(b) by communicating information regarding a consumer debt to a member of the Plaintiff's family; and
 - (e) The Defendants violated California Civil Code §1788.17 by failing to comply with the FDCPA as alleged above.

35. Defendants' acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

36. As a proximate result of Defendants' violations enumerated above, Plaintiff was damaged in amounts which are subject to proof.

37. Defendants' violations of the Rosenthal Act were willful and knowing. Defendants are therefore liable to Plaintiff for Plaintiff's actual damages, statutory damages, and attorney's fees and costs pursuant to California Civil Code §1788.30.

111

1 **VII. THIRD CLAIM FOR RELIEF**

2 **(Against all Defendants for Invasion of Privacy: Intrusion Into Private Affairs)**

3 38. Plaintiff repeats, realleges and incorporates by reference all of the foregoing
4 paragraphs.

5 39. Plaintiff had a reasonable expectation of privacy in her solitude, seclusion, and
6 private concerns and affairs.

7 40. Defendants willfully and intentionally intruded into Plaintiff's solitude,
8 seclusion, and private affairs by repeatedly and unlawfully attempting to collect a Debt.

9 41. Defendants' intrusions would be highly offensive to a reasonable person and
10 did in fact offend Plaintiff.

11 42. As a result of such invasions of privacy, Plaintiff was harmed and caused
12 emotional distress.

13 43. Defendants acted with oppression and malice and are therefore liable to
14 Plaintiff for damages in an amount to be proven at trial, and for punitive damages.

15 **WHEREFORE**, Plaintiff respectfully requests that judgment be entered against
16 Defendants, and each of them, for the following:

- 17 (a) Actual damages;
- 18 (b) Statutory damages pursuant to 15 U.S.C. §1692k and Cal. Civ. Code
19 §1788.30(a);
- 20 (c) Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k and Cal.
21 Civ. Code §1788.30(b) and §1788.30(c);
- 22 (d) For punitive damages; and
- 23 (e) For such other and further relief as the Court may deem just and proper.

24 Date: 8/24/12

25
26
27 
28 _____
 Jeremy S. Golden,
 Attorney for Plaintiff

1 **DEMAND FOR JURY TRIAL**
2

3 Please take notice that Plaintiff demands trial by jury in this action.
4

5 Date: 8/24/12
6

7

8 Jeremy S. Golden,
9 Attorney for Plaintiff
10

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

| | | | | | | |
|---|--|--|---|---|---|---|
| I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) ALMATINA SMITH, an individual, | | DEFENDANTS PROGRESSIVE FINANCIAL SERVICES, INC., a corporation; and DOES 1 through 10, inclusive, | | | | |
| (b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Jeremy S. Golden (SBN 228007) Golden & Cardona-Loya, LLP 3130 Bonita Road, Suite 200B, Chula Vista, CA 91910. Phone (619) 476-0030 | | Attorneys (If Known) | | | | |
| II. BASIS OF JURISDICTION (Place an X in one box only.) | | III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) | | | | |
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) | Citizen of This State | PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State <input type="checkbox"/> 4 <input type="checkbox"/> 4 | | | |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 | | | |
| | | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6 | | | |
| IV. ORIGIN (Place an X in one box only.) | | | | | | |
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify): _____ | <input type="checkbox"/> 6 Multi-District Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge |
| V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) | | | | | | |
| CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | | | MONEY DEMANDED IN COMPLAINT: \$_____ | | |
| VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq. | | | | | | |
| VII. NATURE OF SUIT (Place an X in one box only.) | | | | | | |
| OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes | CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 | |
| | | | | | | |

FOR OFFICE USE ONLY: Case Number: _____

CV12-7618

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or

B. Call for determination of the same or substantially related or similar questions of law and fact; or

C. For other reasons would entail substantial duplication of labor if heard by different judges; or

D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

| | |
|---------------------------------------|---|
| County in this District: [*] | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles County | |

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

| | |
|---------------------------------------|---|
| County in this District: [*] | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles County | |

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

| | |
|---------------------------------------|---|
| County in this District: [*] | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles County | |

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date 08/29/2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action |
|---------------------|--------------|--|
| 861 | HIA | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862 | BL | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923) |
| 863 | DIWC | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g)) |
| 863 | DIWW | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g)) |
| 864 | SSID | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended. |
| 865 | RSI | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g)) |